

APPEAL NO. 022169  
FILED OCTOBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 16, 2002, with the record closing on July 30, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable right knee injury on \_\_\_\_\_; that the appellant (self-insured) is not relieved of liability on the basis that the claimant failed to file his claim with the Texas Workers' Compensation Commission (Commission) within one year of the date of injury; and that the self-insured did not waive the right to contest compensability.

The self-insured appeals, asserting that there was insufficient medical evidence of a new \_\_\_\_\_, injury; that the claimant failed to timely file a claim for compensation; and that the "tolling provision does not apply" because the self-insured did not have a duty to file an Employer's First Report of Injury or Illness (TWCC-1). The self-insured also raises matters not at issue in this case. The claimant responds, urging affirmance and contending that the hearing officer's Decision and Order may be affirmed based on the self-insured's waiver of the defense of lack of timely filing.

DECISION

Affirmed.

This case involves a rather complex set of facts. Briefly, the claimant sustained a compensable bilateral knee injury in 1990 (not directly at issue here). It is undisputed that the claimant has had a number of knee surgeries as a result of that injury and continued to receive treatment for continuing knee problems. The claimant testified that on \_\_\_\_\_, he tripped over a telephone cord and injured his right knee at work. There is ample evidence that the incident occurred, but it is the self-insured's position that the claimant did not sustain a new injury. The claimant did see a doctor later in the day on \_\_\_\_\_, however, that appears to have been a preexisting appointment. The medical reports make no mention of a new injury and continue to reference only the 1990 injury. One report, in November 2001, does remark that the claimant sustained an aggravation injury to his right knee on \_\_\_\_\_. An MRI of the right knee performed on December 19, 1997 (incorrectly stated to have been performed on \_\_\_\_\_, in the hearing officer's discussion), had an impression of "a complex tear of the posterior horn of the medial meniscus." The claimant points out that an operative report of February 1994 showed "no peripheral tears of the posterior horn of the lateral meniscus." Continued right knee instability was noted in several reports and the claimant apparently had several additional surgical procedures in 1998 and 1999.

The claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Commission on April 28, 1999, alleging a

February 25, 1997, date of injury. The Commission's EES-41 letter while sent to the claimant's state agency as the employer, was sent to an incorrect insurance carrier (instead of to the State Office of Risk Management). The self-insured, both at the CCH and on appeal, is adamant that "the Carrier [the self-insured] had no knowledge of the allegation [of the claimant's \_\_\_\_\_ injury] until August 10, 1999," and disputed that claim on August 17, 1999." The self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed August 17, 1999, asserted first written notice of the injury on August 10, 1999. The self-insured's TWCC-21 only disputes compensability and that the claimant did not sustain a compensable injury. It did not include the defense of failure to timely file a claim.

The self-insured asserts that the claimant has failed to timely file a claim for compensation and does not have good cause for failing to do so. Section 409.003. However, Section 409.022(b) provides that the grounds for refusal specified in the notice of refusal of pay benefits constitute the only basis for the self-insured's defense in a further proceeding unless based on newly discovered evidence that could not reasonably have been discovered earlier. At the time of the filing of the self-insured's TWCC-21, the self-insured obviously should have been aware that the claimant's claim had not been filed within one year of the date of injury, but the self-insured failed to specify that defense in its TWCC-21 and is precluded from doing so now.

Regarding compensability of the injury, while, as the self-insured notes, most of the medical reports reference the old injury, at least one very brief comment gives the opinion that the claimant sustained a new injury on \_\_\_\_\_, and the pre versus post \_\_\_\_\_ MRIs show significant changes. Consequently the hearing officer's decision on compensable injury is affirmed.

On the timely filing of the claim, the hearing officer's discussion would indicate that he believed that the requirement to file the claim was tolled by the self-insured's failure to file its TWCC-1 until August 10, 1999. Further as the claimant notes, and discussed above, the timely filing of a claim was not asserted as a defense in the TWCC-21 filed on August 17, 1999. The hearing officer's decision on this issue is affirmed.

We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied). Accordingly, the hearing officer's decision and order are not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust and are affirmed. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.)

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
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For service by mail the address is:

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STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Veronica Lopez  
Appeals Judge